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Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Annual Assessment of the Status of Competition
in the Market for the Delivery of Video Programming

)
)
) CS Docket No. 96-133
)

REPLY COMMENTS

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Multi-Channel TV Cable Company, d/b/a Adelphia Cable Communications ("Adelphia"), files its Reply Comments in the above-referenced proceeding in response to certain erroneous statements of The Wireless Cable Association International, Inc. ("WCAI"), made in its Comments filed on July 19, 1996. WCAI essentially states: (1) the new test for effective competition promulgated by the Telecommunications Act of 1996 can be met only in the area in which a local exchange carrier provides local exchange service; and (2) Adelphia's service rates in the City of Charlottesville, Virginia, are subject to no restraints and are being raised to unprecedented levels.¹ Both statements are utterly false.

DISCUSSION

Effective Competition can Exist Where a Local Exchange Carrier Provides Comparable Video Programming Outside Its Telephone Service Area. Under the new definition of effective competition in the Telecommunications Act of 1996 ("1996 Act"), the existence of effective competition is dependant on the presence of a local exchange carrier ("LEC") or LEC-affiliated

¹ WCAI Comments at pp. 14-16.

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entity providing comparable video programming services to subscribers in the franchise area of an unaffiliated cable operator.² WCAI's claim that effective competition under the new test can exist only where the LEC provides telephone service is ludicrous. WCAI cites no authority for such a ridiculous contention. Nothing in the 1996 Act, its legislative history, or the Commission's Order and Notice of Proposed Rulemaking to implement the Cable Act reform provisions of the 1996 Act³ even implies such a conclusion. In fact, the 1996 Act strongly supports the opposite: effective competition from any LEC or LEC-affiliate can exist "out-of-region," that is, outside the area in which the LEC provides local exchange service.

The new effective competition definition applies to "a local exchange carrier or its affiliate."⁴ As noted by the Commission in its Reform Order,⁵ the 1996 Act defines "local exchange carrier" as follows:

The term "local exchange carrier" means *any* person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of such term.⁶

² 1996 Act, § 301(b)(3)(C), *to be codified at* Communications Act of 1934, § 623(1)(1)(D).

³ Order and Notice of Proposed Rulemaking in CS Docket No. 96-86, FCC 96-154, ____ FCC Rcd ____ (rel. April 9, 1996) ("Reform Order").

⁴ 1996 Act, § 301(b)(3)(3)(C), *to be codified at* Communications Act of 1934, § 623(1)(1)(D).

⁵ Reform Order at n. 14.

⁶ 1996 Act, § 3(a), *to be codified at* Communications Act of 1934, § 153(r) (emphasis added).

In neither definition is there a restriction or limitation on where a person must provide telephone exchange services for purposes of showing effective competition.

Significantly, the 1996 Act also includes a definition for an “*incumbent* local exchange carrier”: “For purposes of this section [new § 251, Interconnection], the term ‘incumbent local exchange carrier’ means, with respect to an area, the local exchange carrier that ... on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area”⁷ Although the definition is prescribed for the section on interconnection, the 1996 Act borrows the incumbent LEC definition for use in other sections where Congress found it appropriate to restrict the provisions to an in-region LEC.⁸ Notably, however, the incumbent LEC definition is *not* used in the new test for effective competition. If Congress had intended to limit the new effective competition test only to those areas in which the LEC provides telephone exchange service, it merely had to use the “incumbent LEC” definition in the test. It did not.⁹

The potential for effective competition from an out-of-region LEC also is strongly supported by the Commission’s recent Report and Order regarding open video systems

⁷ 1996 Act, § 101(a), *to be codified at* Communications Act of 1934, § 251(h)(1).

⁸ For example, the term “incumbent local exchange carrier, as defined in § 251(h),” is borrowed for purposes of new § 252 (regarding negotiation, arbitration, and approval of interconnection agreements), § 259 (regarding sharing of network infrastructure), and § 275 (regarding the provision of alarm monitoring services).

⁹ Congress also went out of its way to distinguish between in-region and out-of-region services in new § 271, regarding provision of interLATA services by a Bell operating company. It did not make any such distinction in the new effective competition test. Without question, if Congress intended to make such a distinction in the new effective competition test, it would have done so.

("OVS").¹⁰ The Commission made it clear that the 1996 Act's goal of promoting competition would be furthered by allowing LECs to operate an OVS outside their service areas.¹¹ Thus, a LEC that offers comparable video programming out-of-region via an OVS would certainly satisfy the new effective competition test. The Commission also noted Congress' recognition that "telephone companies need to be able to choose from among multiple video entry options to encourage entry."¹² If offering video programming out-of-region via an OVS by a LEC would constitute effective competition under the new test, and if telephone companies are encouraged to use multiple options to enter the video market, then a LEC or LEC-affiliate's offering of comparable video programming by a means other than OVS is to be encouraged to promote competition and also clearly constitutes effective competition under the new test, whether the LEC provides telephone service in the same area or not.¹³

Adelphia's Cable Service Rates are Well Below Maximum Permitted Rates. WCAI's

¹⁰ *In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996*, CS Docket No. 96-46, rel. June 3, 1996 ("Second Report and Order").

¹¹ *See*, Second Report and Order at ¶¶ 2, ¶18.

¹² *Id.* At ¶ 5.

¹³ WCAI's statement that CFW Telephone does not provide local exchange service in the City of Charlottesville and Albemarle County (WCAI's Comments at p. 15) is somewhat misleading. On June 5, 1995, Charlottesville granted CFW Communications Company ("CFW"), through another wholly-owned subsidiary, a telecommunications franchise authorizing CFW to erect, maintain, and operate certain telecommunications lines and associated equipment on, over, along, in, under, and through the public places of the city. Pursuant to this franchise, CFW has installed a 20-mile fiber loop around the City, and has installed drops that connect end-users to the interexchange facilities of Sprint, AT&T, and MCI. Currently, CFW is offering competitive access services, including an internet connection, through this loop. In addition, on July 1, 1996, CFW filed an application with the State Corporation Commission seeking authorization to provide local telephone services in, *inter alia*, the City of Charlottesville and Albemarle County. The 20-mile fiber optic loop will be used to provide such services.

contentions that Adelphia's cable service rates are not subject to restraint and that recent rate increases are unprecedented also are utterly false. In fact, Adelphia's cable service rates are well below the rates justified by its April 21, 1995, cost-of-service filing for the City of Charlottesville. Pursuant to the April 1995 cost-of-service filing, Adelphia is allowed to charge \$10.89 for its basic cable service, and \$11.83 and \$11.14, respectively, for its two cable programming service tiers. Adelphia's recent rate increase to \$9.03 for basic service and \$10.08 and \$7.49 for its cable programming service tiers is well below the April 1995 cost-of-service-permitted rates. The fact that Adelphia has not increased its rates to the April 1995 cost-of-service-permitted levels as it clearly is entitled to do¹⁴ is, contrary to WCAI's statement, evidence that some competitive force is restraining prices.

Conclusion

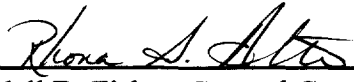
To the extent that WCAI's comments regarding the implementation of § 301(b) of the 1996 Act rely on its statements regarding Adelphia in the City of Charlottesville and Albemarle

¹⁴ See, 47 C.F.R. § 76.933(c).

County, those comments should be disregarded because WCAI's statements regarding Adelphia are untrue.

Respectfully submitted,

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